SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2003-050166-001 DT 09/30/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA

DOUGLAS W JANN

v.

JOSEPH JOHN PARISI (001)

O JOSEPH CHORNENKY

REMAND DESK-LCA-CCC
TEMPE JUSTICE CT-EAST

RECORD APPEAL RULE / REMAND

EAST TEMPE JUSTICE COURT

Cit. No. #CR2003-01522MI

Charge: 1) INTERFER W/JUDICIAL PROCEEDINGS

DOB: 12/22/83

DOC: 03/09/03

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of its assignment on July 29, 2004. This Court has considered and reviewed the record of the proceedings from the East Tempe Justice Court, and the memoranda submitted by counsel.

The primary issue involved in this appeal by the Appellant from the trial court's order finding him guilty of violating A.R.S. Section 13-2810 (Interfering with Judicial Proceedings, a class 1 misdemeanor) is the Appellant's contention that his conduct did not amount to a violation

of the previous Injunction Against Harassment issued against him on January 24, 2003; therefore, he cannot be guilty of the offense charged. Appellant's arguments amount to a challenge of the sufficiency of the evidence to warrant his conviction of the crime of Interfering with Judicial Proceedings. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[1] All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the appellant.[2] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the appellant.[3] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[4] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[5] The Arizona Supreme Court has explained in *State v. Tison*[6] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[7]

The facts in this case reveal that the alleged victim, Katelyn Joy Stocker, was sitting with friends in the Manzanita Dining Hall on Arizona State University's campus.[8] Appellant entered the cafeteria and looked at Katelyn for at least two seconds, but kept walking over to the food line.[9] Appellant was 25-feet from Katelyn at the time he looked at her, the first time. Then, Appellant looked at Katelyn again while he was standing in the food line for about five seconds.[10] Finally, Appellant looked at Katelyn one more time, but Appellant made no attempts

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[1] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).
[2] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[3] *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[4] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; (App. 1999) *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).
[5] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[6] Supra.
[7] Id. At 553, 633 P.2d at 362.
[8] R.T. of April 12, 2004, at page 9.
[9] Id. at pages 10-11.
[10] Id., at page 12.

to contact her, and has not violated the Injunction Against Harassment in any other respect since it was issued.[11] In fact, the only basis for the charges in this case is that Appellant looked at the victim and made eye contact with her three times at a distance of at least 25-feet.[12]

At the conclusion of the State's case, Appellant's trial attorney made a Motion for Judgment of Acquittal, which was denied by the trial judge. The trial judge acknowledged that the State's case was based upon "eye contact" between Appellant and the victim.[13] The entirety of the closing arguments heard by the trial judge involved whether "eye contact" constituted a violation of the Injunction Against Harassment. The Injunction Against Harassment issued by the East Tempe Justice Court on January 24, 2003: "The Defendant (Joe Parisi) shall not contact Plaintiff (Katelyn Joy Stocker) in person, in writing, or through third parties." It also provided in a separate paragraph that "Defendant (Joe Parisi) may attend ASU, but no contact with Plaintiff (Katelyn Joy Stocker) or Palo Verde CMP."

The statute at issue is not helpful in this case, as no definition of the word "contact" is provided. Rather, this Court must construe the word "contact" in its normal, everyday sense. Of significant importance to this Court is the fact that "eye contact" is not prohibited anywhere within the Injunction Against Harassment issued against Appellant, Joe Parisi. In fact, the Injunction Against Harassment prohibits contact in person, by phone, and through third parties. Eye contact, particularly from a distance of at least 25-feet, is not prohibited by the Injunction Against Harassment. Therefore, this Court must conclude that eye contact alone is not a violation of the Injunction Against Harassment. Understandably, the victim may have become flustered and disturbed at seeking Appellant in the dining hall, and may have been further disturbed by the fact that he made eye contact with her three times. This court determines that no evidence was presented that would constitute substantial evidence that the Appellant violated the Injunction Against Harassment. Finding no evidence to support the trial court's verdict, this Court must reverse and vacate that judgment.

IT IS THEREFORE ORDERED VACATING AND REVERSING the verdict and judgment of the trial court in this case and remanding this case back to the trial court with instructions to enter a judgment of acquittal in this case.

/ S / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

[11] Id., at pages 17-20.
[12] Id., at pages 19-20.
[13] Id., at page 34.